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June 3, 1999

**FOR SETTLEMENT PURPOSES ONLY
PROTECTED FROM DISCLOSURE
UNDER FRE 408**

Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, Illinois 60604

Re: City of Montgomery - Skinner Landfill, West Chester, Ohio – *De Minimis*
Settlement

Dear Ms. Estes:

We are legal counsel to the City of Montgomery ("Montgomery") in connection with the above-referenced matter. As you may be aware, Montgomery entered into a *de minimis* settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action pending in the United States District Court for the Southern District of Ohio. In addition to providing for, among other things, settlement of Plaintiffs' claims for past and future costs and expenses incurred and to be incurred at or in connection with the Skinner Site, that agreement requires certain of the Plaintiffs to attempt to negotiate a *de minimis* settlement between Montgomery (and all other settling *de minimis* parties) and the United States (on behalf of U.S. EPA) that is at least as protective of the Company's interests as are the terms of U.S. EPA's Model *De Minimis* Consent Decree set forth in the December 7, 1995 *Federal Register*.

It is Montgomery's understanding that U.S. EPA Region V has now determined that the Agency can proceed with *de minimis* settlement negotiations and has identified what information it will require in order to confirm that Montgomery qualifies for a *de minimis* settlement at this Site. We understand that the required information consists of: (i) the summary of each *de minimis* settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Site Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each *de minimis* settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

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Sherry Estes, Esq.
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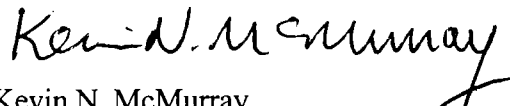
Accordingly, I am enclosing the information requested by U.S. EPA for Montgomery. I believe that this information amply demonstrates that Montgomery is entitled to a *de minimis* settlement consistent with U.S. EPA's model *de minimis* consent decree. Montgomery understands that U.S. EPA and the Plaintiffs will allocate among themselves the monies to be paid by Montgomery and the other *de minimis* settlors in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Montgomery does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that Montgomery is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, the City strongly urges EPA to finalize an appropriate *de minimis* settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's *de minimis* settlement policies, as well as provide needed funds for response actions at the Skinner Site.

If you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

FROST & JACOBS LLP


Kevin N. McMurray
Counsel for City of Montgomery

KNM:llb
Enclosures
cc: Terry Donnellon, Esq. (w/encls.)

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City of Montgomery

SNH

Settlement Amount: **\$7,689.24**

Excerpt from Allocator's Preliminary Report :

According to its questionnaire response, before 1957, the City provided its own waste removal services. Beginning in 1957, Montgomery contracted with Rumpke Waste Removal Systems. One former employee recalled C. L. Hopkins removing residential trash but the City's contract was with Rumpke, so this may not be correct. Montgomery said. The City did not know and did not attempt to estimate the amount of waste collected at any time period while the Site was operating.

A 1954 City Ordinance stated that Montgomery agreed to utilize a waste disposal facility (which appears to be an incinerator) to be provided by the Board of County Commissioners of Hamilton County. Montgomery was unable to offer any more details on disposal locations prior to 1957. After Rumpke became a hauler, the City believed waste collected was taken to Rumpke's own landfill.

Montgomery generated ordinary MSW including: refuse from City Hall, residences and small retail businesses. There are only a few businesses that comprise more than 20,000 square feet and each provided for its own waste disposal, I was told. The City never had any sewage or wastewater treatment plants.

In response to the follow-up questions, the City said that it reviewed legislative records and City department records. However, since the City contracted with Rumpke beginning in 1957, the City had no direct involvement with waste disposal and said that disposal location information had to come from Rumpke for the waste it collected after that date.

Montgomery originally stated that it was not linked to the Skinner Site based on its records search and interviews. However, in a supplemental response, the City said that it had located a retired foreman from its Service Department, Delmar Proffit, who recalled using Skinner on a limited basis in the mid-1960s. Mr. Proffit indicated that the City hauled "gravel and dust" generated from street sweeping. The City used its own machinery to clean the streets and used its own dump truck to haul the waste to Skinner. Besides gravel and dust, the waste may have included tree limbs or other brush. Mr. Proffit recalled delivering approximately six loads to the Site.

Mr. Proffit believed that the City waited until it had a full load to take to Skinner because the Site was some distance from the City. The loads from the street sweeping were hauled to the Site in a 4 cy dump truck. Mr. Proffit stated that Montgomery ceased this practice because of Skinner's distance from the City and because of difficulties at the Site. "He indicated that he thought it was poorly managed and it was never easy finding someone at the Site nor negotiating through the Site with the various dogs that were on the property." Mr. Proffit recalled that C.L. Hopkins was used for residential waste collection for a brief period of time in the late 1960s and that Rumpke otherwise was the collector.

In another supplemental response, the City reported to me on August 14, 1998 that its retired police chief, Ray Moore, recalled that the City used the Skinner Landfill to dispose of items such as street sweepings, tree branches and other debris "after thunderstorms or during an annual street sweep of the community." Chief Moore estimated no more than a half a dozen trips to the Landfill involving no more than one and one-half truck loads at a time. The trucks were referred to as "small dump trucks."

Chief Moore also recalled that in the 1950s, the City contracted with Rumpke, C.L. Hopkins or a person named Hanke for some waste hauling. I cannot tell from the response whether it was one of these or all three of these. I note, however, that C.L. Hopkins was a regular user of the Skinner Landfill based on the Skinner log with entries for 1955 - 1959 and 1963 - 1968.

The Skinner log has a ledger entry dated August 9, 1957 for dumping by Montgomery in the amount of \$62.50. Montgomery suggested that this entry represents materials taken to Skinner on a one-time basis and involved the disposal of solid construction debris and/or landscape debris generated in connection with a Service Department clean-up. The City said that it believed that the log entry represents one truck bed load.

Elsa Skinner recalled the City as a customer but could add no other details. No other witness had a recollection of Montgomery as a user of the Landfill.

Waste-in Amount. I have decided to combine Chief Moore and Mr. Proffit's testimony and assign Montgomery a self-reported total of 12 loads. I am also using 7 cys as the size of the dump truck although if Mr. Proffit provides a sworn submittal that it was 4 cys I will accept the reduction. That gives Montgomery 84 cys on the basis of self-reported information.

With respect to the Skinner log entry, I do not assume that the figure of \$62.50 in 1957 represents one truck load of waste. Rather, I am using the same multiplier used in the case of Deer Park since the time period is the same. At \$.1067 per cy, \$62.50 represents an additional 586 cys.

While it appears that it is highly likely that C.L. Hopkins brought Montgomery waste to the Skinner Site, I am noting this fact for now and am not at this juncture assigning any such waste amount to Montgomery.

Hence, Montgomery's waste-in total is 670 cys.

Excerpt from Allocator's Final Report :

The City of Montgomery's ("Montgomery") waste-in amount used a divisor from the Preliminary Report's analysis of Deer Park's volume. That divisor (\$.1067) should have been (\$.21333). (See the Deer Park discussion.) As a result the additional volume added to Montgomery's total should have been 293 cys, not 586 cys (see page 69 of the Preliminary Report, Appendix 1). See also the Avon Products, Inc. discussion.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste in Cys	Liquid Waste in Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem- Dyne	Total
CITY OF MONTGOMERY	377	0	372906	0.1010%	262252	0.0000%	0.01%	0.00%			0.01010%